*THE HON'BLE SRI JUSTICE P.S. NARAYANA

+W.P.No.17703 of 2007

% 14-09-2007

Koya Narayanareddy ..

Petitioner

Vs.

$ The Government of Andhra Pradesh,
Dept of Revenue (Endowments)
Rep.by its Principal Secretary,
Secretariat, Hyderabad and 4 others ..
Respondents

<GIST:

>HEAD NOTE:

! Counsel for the petitioner : Mr. Guru Gopal.N.

^ Counsel for respondents No.1 to 3: A.G.P. for Endowments
Counsel for respondent No.4 : Sri V.T.M.Prasad,
Counse for respondent No.5 : Sri Hanumantha Reddy

?CASES REFERRED :

THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition No.17703 of 2007

Date: 14th September, 2007

Between :-

Koya Narayanareddy ..

Petitioner

And

The Government of Andhra Pradesh,
Dept of Revenue (Endowments)
Rep.by its Principal Secretary,
Secretariat, Hyderabad and 4 others ..
Respondents

THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition No.17703 of 2007

ORDER:-

This Court issued *rule nisi* on 21-8-2007.

2. Counter affidavit is filed by R.4.

3. The Writ Petition is filed for a Writ of Mandamus declaring the action of the respondent No.1 in issuing the impugned order in Rc.No.H2/13766/2007, dt.10-8-2007 as illegal, void besides without jurisdiction as it is against to statutory rules made in G.O.Ms.No.866, dt.8-8-2003 and consequential set aside the Rc.No.H2/13766/2007, dt.10-8-2007 and directing the respondents to conduct the public auction immediately, for collecting the human hair in the 4th respondent Temple with the upset price of the bid offered by the petitioner (Rs.23 lakhs) and to pass such other suitable orders.

4. Sri Guru Gopal, the learned Counsel representing the writ petitioner had taken this Court through the contents of the affidavit filed in support of the Writ Petition and would maintain that it may be that in pursuance of

certain observations made by this Court the impugned order could have been made, but even in such a case, recording reasons as contemplated by Rule 3 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Immovable Properties and Other Rights (Other than Agricultural Lands) Lease and Licenses Rules, 2003 being mandatory, the same had not been complied with and hence the impugned order is bad in law. The learned Counsel also would submit that even otherwise in view of the fact that the Institution already had been taken over in the eye of Law by Tirumala Tirupati Devastanams, the 3rd respondent had no competency to make the impugned order. Certain submissions are made that the writ petitioner is ready and willing to make a higher offer and also prepared to deposit higher amount. Incidentally, the learned Counsel also had taken this Court through the contents of the impugned order and placed reliance on certain decisions too to substantiate his submissions.

5. The learned A.G.P. for Endowments representing R.1 and R.3 would maintain that in the light of the reasons recorded and certain observations made in W.P.No.13181/2007 and also G.O.Ms.No.866, dt.8-8-2003, it cannot be said that the Order impugned is bad in

law and definitely the same can be sustained.

6. Sri V.T.M.Prasad, the learned Counsel representing R.4 would maintain that the Tirumala Tirupati Devastanams as on today had not taken over the management of the subject Temple – Sri Veeranjaneya Swamy Temple, Gandi village and specific stand was taken that the same would be taken over by 28-9-2007. The Counsel also would point out that as on the date of the passing of the impugned order, the 3rd respondent had the authority and hence, the said contention raised by the writ petitioner is totally unsustainable. While further elaborating his submissions, the learned Counsel had taken this Court through the counter affidavit filed by the 4th respondent and the averments made therein and also had taken this Court through the impugned order and would maintain that the impugned order specifically refers to the Order made by this Court and in view of the same, the reasons recorded by this Court also may have to be read along with the reasons recorded by the 3rd respondent and hence, in the light of the same, Rule 3 of the Rules specified supra had been complied with.

7. Sri Hanumantha Reddy, the learned Counsel representing 5th respondent would maintain that even on a careful analysis of the averments made in the affidavit

filed in support of the Writ Petition, no serious allegations as such relating to malafides or otherwise had been averred. The learned Counsel placed strong reliance on the Order made by this Court in W.P.No.13181/2007 and also pointed out to the relevant portions of the Order made in the said Writ Petition. While further elaborating his submissions, the learned Counsel would contend that the decisions on which reliance is being placed by the Counsel for petitioner are not applicable to the facts of the present case and those decisions are distinguishable.

8. Heard the Counsel and perused the records.

9. It is the case of the writ petitioner that the petitioner is a businessman and intends to have the license rights to collect the human hair offered by the devotees at the 4th respondent Temple. It is further averred that Sravanamasa Festival is the biggest event in the 4th respondent Temple and most of the devotees who visit the Temple during the period used to offer their hair to the Deity and hence most of the human hair would be procured by the Temple in this month only. It is also stated that the petitioner came to know from the statement of the 4th respondent published through newspapers that the 1st respondent Government had issued G.O.Ms.No.700 dt.25-5-2007 amalgamating the 4th

respondent Temple with the 2nd respondent Temple. It is further stated that in the very same newspaper clipping it was informed by the 4th respondent temple that 3rd respondent had also issued the orders on 16-6-2007 to handover the 4th respondent Temple to the 2nd respondent temple. It is also averred that the 2nd respondent Temple is not under the administrative control of the 3rd respondent. It is further stated that the 2nd respondent Temple is under the direct administrative control of the 1st respondent and hence, the 3rd respondent Commissioner has no jurisdiction over the 4th respondent Temple, once the same was amalgamated/adopted with the 2nd the and hence, the present impugned order is issued without jurisdiction. It is further stated that one M.P. had written a letter on 5-6-2007 and because of this the 3rd respondent might have been influenced and might have made the impugned order. It is also stated that the 3rd respondent ought to have made the order by following the statutory Rules while discharging his functions. Further it is stated that even there is no adoption/amalgamation of the 4th respondent Temple with the 2nd respondent Temple, still

the action of the respondent No.3 in passing the impugned order is bad and violative of statutory Rules issued in G.O.Ms.No.866, dt.8-8-2003 wherein and whereunder though there is power is vested with the 3rd respondent for granting of lease or license otherwise than auction by virtue of Proviso to Rule No.3, but he has to exercise that power by recording the reasons in this regard and he has to express in words (in writing) about the satisfaction about granting the lease or license otherwise than the pubic auction. It is further stated that the Rule No.3 ordains that all the leases or licenses should be granted by conducting public auction, the respondent No.3 cannot be permitted to depart from the same, without specifically recording the reasons, why the normal practice of the going for tender/public auction has to be dispensed with. It is further stated that in the present case, the impugned order does not refer to under what circumstances, he wants to take decision to differ from the normal practice of public auction of human hair. It is also further stated that the 5th respondent who is trader and highest bidder for the last year i.e., 1-8-2006 to 31-7-2007) to collect the human hair in the 4th respondent Temple has made representations to all the higher authorities including the 3rd respondent. It is further stated that it

seems from the references mentioned in the impugned orders (specially reference No.2 and 5) has influenced the 3rd respondent and has departed from the usual practice of the putting the leasehold rights for public auction and passed the present impugned order granting the license rights in favour of the 5th to collect the human hair in the 4th respondent Temple for one year i.e., from 1-8-2007 to 31-7-2008 by order dt.10-8-2007. It is further averred in para 9 of the affidavit that the Sravanamasa festival starts from 13-8-2007 in the 4th respondent Temple and during this period only, 50% annual collection of human hair will be procured and the petitioner is willing to take the license rights of collecting human hair in the respondent Temple for this period of 1-8-2007 to 31-7-2008. It is further stated that actually, the petitioner waiting to participate in the public auction and when he approached the 4th respondent Executive Officer on 13-8-2007 about the public auction date, he was informed about the present impugned order dt.10-8-2007. It is also stated that immediately on the very next day, the petitioner approached the office of the 3rd respondent and on enquiry, he was told that there is slump in the human hair market and there is no possibility of getting the last year price and hence in that circumstances, the impugned

order was passed. It is also further stated that when the petitioner expressed his willingness to take the lease of the collection of human hair in the 4th respondent Temple for an amount more than that of the price mentioned in the impugned order, the petitioner was asked to submit his offer by enclosing the Demand Drafts. It is further stated that on the very sameday, the petitioner had given his offer to the 3rd respondent Temple stating that he is enclosing the Demand Drafts drawn in favour of the 4th respondent Temple for an amount of Rs.23,00,000/- and expressing his willingness to participate in the public auction. It is also stated that the 3rd respondent office is not ready to give acknowledgement for the Demand Drafts and refused to receive the petitioner's offer. It is also further stated that the price of Rs.19,50,000/- + 3% comes to Rs.20,08,500/- but the petitioner ready to furnish Demand Drafts in favour of the 4th respondent Temple for an amount of Rs.23 lakhs to get the right to collect the human hair for the period starts from 1-8-2007 to 31-7-2008. Further it is stated that the petitioner is ready to forego with the present amount of Rs.23 lakhs which the petitioner is depositing by way of Demand Drafts in the event of any lesser bid offered than the 23 lakhs to the

Temple by any of the participants including the petitioner and the petitioner believes that if the respondents conduct the public auction immediately, the participants may offer more bid than the petitioner's offer in view of the immediate getting of the human hair during the Sravanamasa festival, which started from 13-8-2007.

10. In the counter affidavit filed by the 4th respondent – the Executive Officer of Sri Veeranjaneya Swamy Temple, it is averred that it is true that the hair offered by the devotees visiting the Temple during Sravanamasa from 13-8-2007 to 11-9-2007 amounts to more than 60% of the hair offered by the pilgrims for the entire year. It is also further averred in paras 3, 4 and 5 that the Commissioner, Endowments in Rc.No.H2/13766/2007, dt,.10-8-2007 in pursuance of the orders of this Court in W.P.No.13181/2007 dt.17-7-2007 permitted the Executive Officer – the 4th respondent Temple to continue the existing lessee – the 5th respondent for the leasehold rights of collection of human hair for another period from 1-8-2007 to 31-7-2008 with an enhancement of 3% on the existing rate of Rs.19,50,000/-. It is further stated that the 5th respondent has paid on 13-8-2007 Rs.20,08,500/- at 3% enhancement over the periods lese of Rs.19,50,000/- and that he paid Rs.8,00,000/- by D.D.No.135171 and

Rs.7,00,000/- by D.D.No.135172 both dt.14-8-2007 drawn on Lakshmi Vilas Bank, Eluru and Rs.5,08,500/- by cash and he also executed an agreement in favour of the Temple on 16-8-2007 evidencing the above facts. It is also further stated that the Executive Officer of Tirumala Tirupti Devastanams has in pursuance of G.O.Ms.No.700 Revenue (Endowments) Department, dt.25-5-2007 infromed the Executive Officer of 4th respondent Temple through proceedings Roc.No.T-S3/4550/2007, dt.15-8-2007, that the Tirumala Tirupati Devastanams will take over the management of Sri Veeranjaneya Swamy Temple, Gandi Kshetram on 28-9-2007. It is also further stated that the impugned order has met the requirements of Rule 3 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Immovable Properties and Other Rights (Other than Agricultural Lands) Lease and Licenses Rules, 2003. It is also stated that the petitioner never approached this respondent at any time regarding this matter, much less on 13-8-2007 and he had not given the Demand Drafts for Rs.23,00,000/- and this is totally false. As stated earlier about 60% of the human hair was offered for the entire period of one year is done in the Sravanamasa festival which will be over on 111-9-2007 and it will be totally

impracticable and unworkable to have public auction at this point of time. The dismissal of the Writ Petition had been prayed for.

11. Rule 3 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Immovable Properties and Other Rights (Other than Agricultural Lands) Lease and Licenses Rules, 2003 (hereinafter, in short, would be referred to as 'Rules' for the purpose of convenience) dealing with ***all leases or licenses shall be made by way of public auction*** reads as hereunder:-

> *(1) All leases or licenses shall be made by way of public auction.*
>
> *Provided that, the Commissioner may, on a request made in writing by the executive authority permit the lease of any property or right otherwise than by way of public auction, if he is satisfied, for reasons to be recorded in writing that the interest of the institution or endowments will not suffer thereby. He may grant permission to such executive authority to grant a lease otherwise than by way of public auction.*
>
> *(2) The public auction shall be held at the place where the properties are situated or rights exist.*
>
> *Provided that the competent authority may, if he is satisfied that in case the holding of auction at a place other than the one in which the properties proposed to be leased or licensed are situated, will not be detrimental*

to secure a proper bid or will be auction but no auction shall be held, in a district other than the one in which the property is situated.

Emphasis was laid on the language of this Rule *"provided that, the Commissioner may, on a request made in writing by the executive authority permit the lease of any property or right otherwise than by way of public auction, if he is satisfied, for reasons to be recorded in writing that the interest of the institution or endowments will not suffer thereby."* Reliance also was placed on the decision of the Division Bench of this Court in W.A.No.1008/2005 and also the decision of this Court in ***SRI KALIKA DEVI TEMPLE BHAJANA MANDALI, TANDU, R.R.DISTRICT v. COMMISSIONER OF ENDOWMENTS, GOVERNMENT OF A.P., HYDERABAD***[1]***.*** There cannot be any quarrel or dispute relating to the proposition that the general Rule is that the lease/license to be by public auction and granting such lease/license or extension thereof by private negotiations always to be an exception to the General Rule. It may be appropriate to have a glance at the impugned order Rc.No.H2/13766/2007, dt.10-8-2007 and the same reads as hereunder:-

Office of the Commissioner,
Endowments Department, A.P., Hyderabad.

Rc.No.H2/13766/2007, dt.10-8-2007

Sub:- Endowments Department – Sri Veeranjaneya Swamy Temple –

Gandi (V) – Chakrayapet (M) – Kadapa District –

Continuation of Lease Hold rights of Collection of Human

Hair for the year 2007-08 other than by way of public auction

– Approved – Orders – Issued.

Ref: 1) Representation dt.19-4-2007 from Sri K.V.Bhaskarudi,

Idupulapaya village, Veerannagattupalli (via) Vempalli (M), Kadapa.

2) No.4398/CMP/2007, dt, 25-4-2007 from t CMOs Office, Hyd.

3) This office Rc.No.H2/13766/2007 dt.15-5-2007.

4) Rc.No.Nil/2007, dt.22-5-2007 from the Executive Officer of

the subject Temple.

5) Lr.Dt.5-6-2007 from Sri Y.S.Vivekananda Reddy, M.P.,

Kadapa.

6) Lr.Dt.21-7-2007 from Sri A.Hanumantha Reddy, Advocate,

Hyderabad.

7) Hon'ble High Court order dt.17-7-2007 in

W.P.No.13181/2007.

8) Rc.No.Nil/2007 dt.1-8-2007 from the Executive Office of the

Subject Temple.

@@@@@@@@@@

In the reference 1st and 2nd cited Sri K.V.Bhaskarudu has requested to continue him for a further period of 1 years for collection of Human Hair in the subject Temple. In the reference 3rd cited, the Executive Officer of the subject Temple has submitted a detailed report, stating the reasons for continuation of the lease for another period of 1 years to the sitting tenant. In the reference 6th cited the Advocate for the petitioner i.e., K.V.Bhaskarudi sent a copy of the Hon'ble High Court orders with a request to take a decision as

ordered by the Hon'ble High Court.

The Hon'ble High Court in the reference 7th cited has ordered to dispose of the petitioner's representation for extension of the lease period in accordance with law.

After examining the matter in detail with reference to the provisions of the Act and the Rules made thereunder keeping in view of the orders of the Hon'ble High Court in W.P.No.13181/2007 and in view of the fluctuating trends of human hair trade in the market, the Commissioner, Endowments Department, A.P., Hyderabad hereby permits the Executive Officer of the subject Temple to continue the present lessee i.e., Sri K.V.Bhaskarudu for Lease Hold rights of collection of Human Hair for another period from 1-8-2007 to 31-7-2008 with an enhancement of 3% on the existing rent i.e., Rs.19,50,000/-.

The Executive Officer of the subject Temple is requested to obtain adequate security and register lease deeds from the lessee as per rules in force.

(BY ORDER OF THE COMMISSIONER)

The proceeding in Roc.No.TS3/4550/2007, dt.15-8-2007, is placed before this Court and the same reads as hereunder:-

"OM NAMO VENKATESAYA"

Telex: Tirupati 403-202 *GRAMS: DEVASTHAN*
Tirumala 403-208
OFFICE OF

THE EXECUTIVE OFFICER

From
Sri K.V.Ramanachary, I.A.S.,
Executive Officer.
Roc.No.TS3/4550/2007
Dated: 15-8-2007
To
The Executive Officer,
Sri Veeranjaneya Swamy Temple,

Gandi Kshethram,
Chakrayapet (M),
Kadapa District.

Sir,

Sub:- TTD – Temple Sectio, Tirupati – Taking over of Sri Veeranjaneya Swamy Temple, Gandi Kshethram, situated at Chakaryapet (m), Kadapa District to the fold of TTD – Permission accorded – Sending of Intimation – Reg.

Ref:- 1. G.O.Ms.No.700, Revenue Endowments-III Department, dt.25-5-2007.
2. Roc.No.RH2/19832/2007-1, dt.16-6-2007.
3. R.C.No.Nil/2007, dt.3-7-2007 of the Executive Officer, Sri Veeranjaneya Swamy Temple, Gandi Kshethram.

****

In response to the reference 3rd cited, I am to inform that the TTD management has fixed the date as 28-9-2007 for taking over of Sri Veeranjaneya Swamy Temple, Gandi Kshethram situated the Chakaryapet (M), Kadapa District to the fold of TTD in terms of reference 1st cited.

Hence, I request you to prepare the list of all properties, jewellery and staff of the above said Temple by 28-9-2007 to hand over the same to the TTD management for further maintenance.

IN SERVI CE OF LORD VENKATESWARA
Sd/-. V.CHENGALRAYULU
FOR EXECUTIVE OFFICER

In the light of these proceedings it is clear that the date for

taking over the management of the subject Temple by the Tirumala Tirupati Devastanams had been fixed as 28-9-2007. In the light of the said proceeding and taking into consideration the order impugned, the contention advanced by the writ petitioner that the 3rd respondent has no authority or jurisdiction to make the impugned order, cannot be sustained.

12. Now the other question which may have to be decided and which in fact had been argued in elaboration is whether the impugned order would withstand the legal scrutiny in the light of the language of Rule 3 referred to supra. The principal contention advanced by the Counsel for the writ petitioner is that the condition of recording of reasons had not been satisfied and hence, the impugned order is liable to be quashed. The order made by the 3rd respondent impugned in the Writ Petition already had been specified above. It is pertinent to note that this order was made in the light of an order made by this Court in W.P.No.13181/2007 dt.17-7-2007. It is true that in the said order also Rule 3 of the Rules had been referred to and it was also further observed that the 2nd respondent in the said Writ Petition – the Commissioner, Endowment Department, A.P., Hyderabad, is empowered to permit grant of lease otherwise than by way of public auction in

appropriate cases and for reasons to be recorded in writing. Strong reliance was placed by the Counsel representing the writ petitioner on this portion of the order in W.P.No.13181/2007. It may be appropriate to have a look at the relevant portion of the order made in W.P.No.13181/2007 dt.17-7-2007:-

> *"In the case on hand, the material on record shows that the 3rd respondent – Executive Officer while submitting his remarks did not dispute the grounds on which the petitioner requested for extension of lease period and as a matter of fact the tenor of the said letter dated 22-5-2007 shows that the 3rd respondent in a way recommended the extension sought by the petitioner. In the circumstances, it is for the 2nd respondent – Commissioner to take an appropriate decision with regard to the petitioner's request for extension of the lease period.*
>
> *Since the 2nd respondent is empowered to permit grant of lease otherwise than by way of public auction in appropriate cases and for reasons to be recorded in writing. I am of the opinion that it is necessary for the 2nd respondent to dispose of the petitioner's representation in accordance with law before taking any further steps for grant of fresh lease for the year 2007-08."*

It is true that recording of reasons as specified in Rule 3 specified above and satisfying the other ingredients specified in the said Rule always would be essential while making an order of granting lease/license or extension thereof otherwise than by public auction. It is pertinent to

note that the learned Judge while disposing of W.P.No.13181/2007 specifically referred to the material on record showing the 3rd respondent – Executive Officer while submitting his remarks had not disputed the grounds on which the petitioner requested for extension of lease period and as a matter of fact the tenor of the said letter dated 22-5-2007 shows that the 3rd respondent in a way recommended the extension sought by the petitioner. The learned Judge also further observed that in the circumstances, it is for the 2nd respondent – Commissioner to take an appropriate decision with regard to the petitioner's request for extension of the lease period.

13. As can be seen from the impugned order, the 7th reference made by the 3rd respondent is the order of this Court dt.17-7-2007 made in W.P.No.13181/2007. Further the impugned order also reads that *after examining the matter in detail with reference to the provisions of the Act and the Rules made there under keeping in view of the orders of the Hon'ble High Court in W.P.No.13181/2007 and in view of the fluctuating trends of human hair trade in the market, the Commissioner, Endowments Department, A.P., Hyderabad hereby permits the Executive Officer of the subject Temple to continue the present lessee i.e., Sri*

K.V.Bhaskarudu for lease hold rights of collection of Human Hair for another period from 1-8-2007 to 31-7-2007 with an enhancement of 3% on the existing rent i.e.,Rs.19,50,000/-. The Executive Officer of the subject Temple is requested to obtain adequate security and register lease deeds from the lessee as per rules in force." Hence, in the light of the same, this Court is of the considered opinion that the impugned order made have to be carefully read in the light of all the references made in the impugned order along with the observations made by the learned Judge of this Court as well. In the light of the same, this Court is of the considered opinion that the contention advanced by the learned Counsel representing writ petitioner that the impugned order is not in compliance with Rule 3 of the Rules specified supra, cannot be accepted. It is needless to say that the 3rd respondent is bound to comply with the orders of this Court in true letter and spirit. The 3rd respondent had taken into consideration the observations made by the learned Judge and made the impugned order. Hence, the same cannot be found fault.

14. Accordingly, the Writ Petition is hereby dismissed as being devoid of merit. No order as to costs.

Justice P.S.Narayana

14th September, 2007

Note: L.R. Copy to be marked (YES/NO)

Note: C.C. by 19-09-2007

SMR

[1] 2007 (2) ALD 294